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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR    | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|-------------------------|---------------------|------------------|
| 10/820,880   | 04/09/2004  | Adrianus Cornelis Kruik | 88265-7114          | 9267             |
| 29157  | 7590        | 07/20/2006              | EXAMINER            |                  |
| BELL, BOYD & LLOYD LLC<br>P. O. BOX 1135<br>CHICAGO, IL 60690-1135 |             |                         | TRAN LIEN, THUY     |                  |
|  |             |                         | ART UNIT            | PAPER NUMBER     |

1761

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/820,880

Applicant(s)

KRUIK ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 6-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 6-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The 103 rejection of claims 1, 6-21 over the Werbin reference is hereby withdrawn because applicant's argument is found to be persuasive.

Claims 1, 6-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canadian patent 950750.

Patent no. 950750 discloses pre-baked pastry crusts. The crust comprises about 60-90% dehydrated pre-baked pastry crumbs, 7-25% fat and 0-20% binder material. The binder material may be any sugar, hydrolyzed cereal solids, starches, cellulose, gums or combinations of any of these. The fat may be melted fat or powdered fat. The fat suitable for use can be any of the commercially available fats or hydrogenated vegetable oils.

The patent does not specifically disclose biscuit, the properties as recited in claim 1, the amount of fat claimed, the property of the fat, the inclusion of other ingredients in the mixture of baked pastry and fat, the amount of overrun as in claims 9-10, the making of the confection as in claims 11, 17, the inclusion of other material in the ice confection as in claims 12-14, the form of the confection as in claim 15 and the mixing temperature as in claim 16

The patent discloses using baked crumbs which is a baked product. Biscuit is a baked product; thus, the two particles are the same because the claims have not set forth any difference between the biscuit particles and the baked particles in the patent. Furthermore, it would also have been obvious to use other baked particles depending on the taste and flavor wanted. When baked particles are mixed with the fat, it is obvious the mixture will have the same property as in claim 1 because the same

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materials are used. It is also obvious the fat will have the solid fat content as claimed because the patent disclose the same fat as claimed. It would have been obvious to vary the fat content when desiring to alter the taste, texture, consistency of the mixture. It would also have been obvious to add other food ingredients to enhance the taste of the product; the selection of the type of ingredients and the amounts can vary depending on the taste and flavor desired. It would also have been obvious to combine a frozen confection with the shell disclosed in the patent because it is well known to place frozen confection in pie shell as discussed on line 4 of page 1 of the patent. The type of confection selected depends on the taste and flavor wanted and would have been an obvious matter of choice. It would have been obvious to use any known method to make the frozen confection; both molding and extrusion are well known in the art. It would also have been obvious to have any varying percent of aeration depending on the texture desired for the product. It would have been obvious to include other inclusion to enhance the taste of the ice confection; this is notoriously well known in the art. It would have been obvious to form the shell in any form depending on the look wanted. It would have been within the skill of one in the art to determine the appropriate temperature of the fat so that it can be easily mixed with the particles. This can readily be determined through routine experimentation. It would have been obvious to form the ice confection as the shell or the baked particles as the shell depending on the type of confection wanted. Frozen desserts come in many different shapes and forms; one can readily see this in a supermarket or ice cream novelty store. It would have been obvious to one skilled in the art to make the various forms claimed because

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they are well known in the art. It would have been within the skill of one in the art to determine the temperature to pour the particles through routine experimentation in absence of showing of unexpected result or criticality.

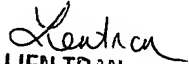
Applicant's arguments with respect to claims 1, 6-21 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

July 17, 2006

  
LIEN TRAN  
PRIMARY EXAMINER  
